

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 637 of 1998

with

Civil Application No. 12396 of 1998

and

APPEAL FROM ORDER NO. 638 OF 1998

WITH

Civil Application No. 12399 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
- 1-5 No

SURESHCHANDRA DHIRUBHAI GANDHI

Versus

KAILASHBEN D/O DHIRUBHAI

Appearance:

APPEAL FROM ORDER NO. 637 OF 1998

MR DD VYAS for M/S.VYAS ASSOCIATES for appellants

MR RAJNI H MEHTA with MR AJAY MEHTA for Respondent

Nos. 1, 3 and 5.

MR RN SHAH for respondnt Nos.2 and 4.

APPEAL FROM ORDER NO. 638 OF 1998

MR RN SHAH for appellants.

MR RAJNI H MEHTA with MR AJAY MEHTA for Respondent
Nos. 1, 2 and 5.
MR DD VYAS for M/S. VYAS ASSOCIATES for respondent
Nos.3 and 4.

CORAM : MR.JUSTICE A.M.KAPADIA
Date of decision: 04/08/1999

COMMON ORAL JUDGEMENT

1. This judgment shall govern disposal of the above mentioned two Appeals from Order arising from the order dated 21.9.1998 recorded below Ex.5 in Special Civil Suit No. 58 of 1997 by learned Civil Judge (S.D.)., Navsari, whereby he has partly allowed the application Ex.5 submitted by the plaintiffs against the defendants restraining them from transferring or alienating immovable properties mentioned in Schedule 'A' to 'S' till disposal of the suit, whereas injunction was refused with respect to immovable properties mentioned in Schedule 'O' to 'U'. Same way, he has also refused injunction with respect to movable properties.

2. Aggrieved by the aforesaid order, original defendant Nos.3 and 4 have preferred Appeal From Order No. 637 of 1998 whereas original defendant Nos.1 and 5 have preferred Appeal from order No. 638 of 1998, challenging the legality, validity and propriety of the order recorded by the learned trial Judge with the aids of the provisions of Order 43 Rule 1 (r) of the Civil Procedure Code ('the Code' for short).

3. The suit in question was filed by the daughters of late Shri Dhirubhai Nathubhai Gandhi against their brothers claiming partition of the suit property since their father late Shri Dhirubhai Nathubhai Gandhi and mother died intestate.

4. Along with the suit, application Ex.5 was also moved wherein interim relief restraining the defendants from transferring or alienating the suit immovable properties mentioned in Schedule 'A' to 'U' and movable properties as well, during the pendency of the suit was claimed.

5. The said application was contested by the defendants by filing written statements.

6. Learned trial Judge, after hearing the advocates appearing for the parties has recorded the order as mentioned hereinabove, which is impugned in these two

Appeals from Order, at the instance of four brothers of the plaintiffs.

7. At the time of hearing of the above mentioned Civil Applications, learned advocates appearing for the parties, made a joint request that upon their consensual statements, the Appeals from Order may be disposed of by modifying the order impugned.

8. After having heard learned advocates for the parties and considering their consensual statements and the facts and circumstances emerging from the record of the case, it would be in the fitness of the things to modify the interim relief granted by the learned trial Judge in following terms:

- a) The injunction granted by learned trial Judge below Ex.5 in Special Civil Suit No. 58 of 1997 qua properties mentioned in Schedule 'A' to 'G' shall continue till disposal of the suit. Resultantly, defendants are hereby restrained from transferring or alienating the properties mentioned in Schedule 'A' to 'G' only, till disposal of the suit.
- b) The injunction granted by the learned trial Judge in respect of the properties mentioned in Schedule 'H' onwards is hereby vacated, however, subject to the condition that the defendants will provide details of all transactions which are entered into by them and will maintain true and correct accounts with respect to the suit properties and shall also furnish necessary accounts in respect of such transactions before the trial Court and the defendants shall file a solemn undertaking to this effect before this Court within two weeks hereof.
- c) The respondents/original plaintiffs will not press the application for appointment of Receiver and will withdraw/get disposed of as not pressed the said application within one week hereof.

9. In view of the aforesaid modified order passed by this Court, both the above Appeals from Order succeed in part. Resultantly, they are partly allowed, however, with no order as to costs.

10. Notice issued on Civil Applications shall stand discharged with no order as to costs.

11. In the facts and circumstances of the case, the learned trial Judge before whom the aforesaid suit is pending for final disposal is directed to give expeditious hearing and dispose of the same as early as possible and preferably on or before 30.4.2000 by giving opportunity for leading their evidence uninfluenced by the modified order recorded by this Court while disposing both the above Appeals from Order. It is hoped that both the parties will cooperate for the expeditious hearing and disposal of the suit.

(karan)